

Sir Tho. Skipwith Baronet, Heir
at Law and Executor of Sr. Thomas
Skipwith Knight and Baronet his late
Father deceased.

Appellant.

Tho. Sturmy Esq; Executor of Dame Eliza-
beth Skipwith Relict of the said Sir Tho. Skipwith
the Father, formerly the Widow and Administra-
trix of Ed. Maddison Esq; her former Husband.

Respondent.

The Appellant Sir Tho. Skipwith's C A S E.

TH A T Gilbert Whitehall and Isaac Meynell Goldsmiths, were Indebted to Mrs. Elizabeth Maddison Widdow in the Sum of 6000 l.

11. July 1674.

T H A T Mrs. Maddison Intermarried with Sir Tho. Skipwith the Appellants late Father, and some time after the Marriage, Whitehall and Meynell Stated an Account with Sir Tho. Skipwith, upon which there appeared to be 6260 l. due for Principal and Interest, And thereupon the Bonds were delivered up, and Whitehall and Meynell Entered into new Bonds to Sir Thomas for the Payment of the said Sum of 6260 l. with Interest.

30. April 1677.

T H A T Whitehall and Meynell having advanced Considerable Sums to the Crown King Charles the Second by Letters Patents granted unto the said Whitehall and his Heirs (Meynell being dead) the yearly Sum of 14931 l. 19 s. 4 d. out of the Hereditary Revenue of Excise, In Trust for such of his Creditors as should Accept thereof.

T H A T Whitehall upon giving up the said Bonds which had been Entered into by him and his Partner to Sir Tho. Skipwith, Did Assigne unto Sir Tho. Skipwith and his Heirs 400 l. per Annum out of the said Revenue of Excise which said Deed is Enrolled in the Office of the Auditor of Her Majesties Receipt according to the Directions of the said Letters Patents.

24. Decemb. 1677.

T H A T it is pretended by the Respondent, That the said Sir Tho. Skipwith by Indenture dated 24th of Decemb. 1677, Reciteing a Grant made to the said Sir Tho. Skipwith of the said Annuity by the said Whitehall by Deed dated the 21th of December, 1677, (which in fact did bear Date the 24th of January 1677) did by the said Indenture Covenant with Walter Rea Esq; Brother of the said Lady Skipwith to stand Seized of the said Annuity To the Use of the said Sir Tho. Skipwith and Dame Elizabeth his Wife for their Lives with Remainder to the Heirs of the Survivor of them, But the Respondent cannot pretend the same Deed was Enrolled nor any other notice taken of it.

28. May 1694.

T H A T Sir Thomas the Appellants Father in Consideration of the said Annuity and Portion brought to him by the said Lady Skipwith, Settled a Jointure upon her of near 600 l. per Annum, The said Sir Thomas Skipwith all along intending the said Annuity for his Son the Appellant, and looking upon it as his own Estate, He and his Heirs being the only Persons who by the Rules of the Exchequer stood Intitled to it.

March 1697.

T H E said Sir Tho. Skipwith died leaving by his Will considerable Legacies to the Lady Skipwith his Wife, and leaving the Appellant Executor of his Will and his only Son and Heir.

T H A T the Lady Skipwith upon the decease of the said Sir Tho. Skipwith her Husband, Entered upon her said Jointure so made to her in Consideration of the said Annuity as aforesaid, And enjoyed it during her Life, and never made or entered any Claim to or for the said Annuity, And afterwards in March 1697 died leaving Mr. Sturmy Executor of her Will wherein no mention is made of the said Annuity, neither can Mr. Sturmy pretend any Defect of Assets; tho' he never receives any Part of the said Annuity.

T H A T John Rea Esquire is Brother and Heir to the said Lady Skipwith and being sensible of the Intentions of the said Sr. Thomas Skipwith in Relation to the said Annuity, Did assign over and release the said Annuity unto the Appellant and his Heirs.

T H A T the Appellant being thus Intitul'd to this Annuity enter'd his Claim at the Exchequer, And thereupon obtain'd an Order for the Payment of it, The said Lady Skipwith in her Life time, nor the said Sturmy her Executor ever claiming any Right thereunto.

T H A T in Easter Term last the Respondent Sturmy brought his Bill in the Exchequer against the Appellant and John Rea for the Recovery of the said Annuity, and obtain'd a Decree that the Appellant and the said John Rea, should assign the said Annuity to the said Respondent.

First.

W I T H which Decree the Appellant humbly conceives himself aggrieved.

F O R that Sr. Thomas Skipwith having settled a considerable Jointure upon the said Lady Skipwith in Consideration of the said Annuity and the said Jointure having been accepted of by the said Lady Skipwith after her Husband's Death, And it being always intended that the said Annuity should go to the Heirs of the said Thomas Skipwith, The Respondent Sturmy her Executor ought not (especially in a Court of Equity) to have been relieved concerning the same.

Secondly.

F O R that the pretended Indenture of the 24th. of December 1677. purporting a Settlement made by the said Sr. Thomas Skipwith of the said Annuity in manner as aforesaid, bearing Date before the Real Assignment of the Annuity by the said Whitehall, unto the said Sr. Thomas Skipwith, is in Law void, as purporting an Assignment, of what the said Sr. Thomas Skipwith at that Time had not, nor was Intitul'd unto; the Deed of Assignment from Whitehall to Sr. Thomas Skipwith deceased, being executed not till the 24th. of January following, And since such pretended Settlement is void in Law, There is no Reason, (it being merely voluntary) to make it good in Equity.

Thirdly.

I N Case the said pretended Settlement of the said Annuity should take Place, then the said Annuity did vest in the Lady Skipwith upon her surviving her Husband, And did from her descend to the said Rea her Heir at Law, and consequently by him well assign'd to the Appellant. And that these Annuities were Inheritances until the Statute of the 2d and 3d of Her present Majesty is plain, they being granted by the express Words of the Statute of the 12th and 13th of the late King William, unto the respective Owners and their Heirs; for which reason Fines have been often levied of the said Annuities: And the Statute of the 2d and 3d of Her present Majesty, which does Enact, That such Annuities shall be taken as Personal Estate, would have been wholly unnecessary if they were but Personal Estates before.

S O that the Appellant, if not otherwise Entitled to the said Annuity, has a good Title thereto, by Vertue of the said Assignment of the said John Rea, the Heir of the said Lady Skipwith.

F O R which Reasons among others, the Appellant hopes that the said Decree of the Exchequer shall be Revers'd: And that the said Respondent, who was no Relation to the Lady Skipwith, shall not go away with the chiefest Part of the Estate, when she in Consideration thereof, had so large a Jointure settled upon her by her Husband, the Appellant's late Father; who added 300 l. per Ann. to her Jointure, about a Fortnight before he dyed.

Spencer Cowper.